Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
High-Cost Universal Service Support Reform	)	WC Docket No. 05-337

COMMENTS OF
THE NEBRASKA RURAL INDEPENDENT COMPANIES
AND
THE SOUTH DAKOTA TELECOMMUNICATIONS ASSOCIATION

I. Introduction

The Nebraska Rural Independent Telephone Companies and the South Dakota Telecommunications Association, on behalf of its member companies, (jointly referred to as "the Companies")[1] respectfully submit these comments in response to the Federal-Communications Commission's ("Commission") Notice of Proposed Rulemaking ("NPRM") released on May 1, 2007 in the above-captioned proceeding. In the NPRM, the Commission seeks comment on the *Recommended Decision* of the Federal-State Joint Board on Universal Service ("Joint Board') to impose an interim, emergency cap on the amount of high-cost support that competitive eligible telecommunications carriers ("CETCs") may receive for each state based on the average level of competitive ETC support distributed in that state in 2006.[2]

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[1] A complete listing of the companies comprising the Nebraska Rural Independent Telephone Companies and the South Dakota Telecommunications Association member companies are listed in Appendix A.

[2] *See High-Cost Universal Service Support,* WC Docket No. 05-337, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, FCC 07J-1 (rel. May 1, 2007) (*"Recommended Decision"*) at ¶ 1.

The Companies submit that an interim, emergency cap on the amount of high-cost universal service fund ("USF") support, is a prudent and necessary step to preserve the sustainability of the fund in the short-term, while analyzing long-term reforms. As the Companies will demonstrate in these Comments, wireless CETCs have benefited from the identical support rule. Wireless CETCs often receive support in excess of the amount received by an incumbent local exchange carrier ("ILEC") for serving the same household, and receive support from access support mechanisms while never having provided access services. Wireless CETCs and their subscribers may insist that an interim cap of CETC support will harm the deployment of wireless services to unserved rural areas. However, a case study of the use of high-cost USF by Alltel in South Dakota indicates that much of the high-cost USF it received was not used for tower construction, and much of the tower construction that did occur was in the more populous areas of the state which already had service, instead of in the more sparsely populated unserved areas. An interim cap of CETC support will also serve to give the Commission time to develop additional accountability measures for the use of high-cost USF by wireless CETCs. Therefore, the Companies support the measures to stabilize the high-cost USF contained in the *Recommended Decision* in their entirety, and urge the Commission to adopt such measures expeditiously.

II. An Interim Cap on CETC Support Would Place CETC Support on a More Competitively Neutral Basis With ILEC Support.

The nearly exponential growth in support paid to CETCs has been fueled both by the granting of designation to additional CETCs and by the number of subscriptions submitted by CETCs. Wireline ILECs generally submit about one subscription per household for support, whereas wireless CETCs often submit three or even four wireless subscriptions for support,[3] even though the wireless CETC is still providing telecommunications service to the same number of persons in the household as the wireline ILEC. Therefore, the identical support rule has served to provide more support per household to wireless CETCs, because wireless service subscriptions are submitted on the basis of handsets, which are assigned to individuals within a household. However, because a wireless CETC is serving the same household as an ILEC in most instances, the wireless CETC should not, under the identical support rule, receive a greater amount of support to serve the same household. An interim cap on CETC support could indirectly serve to bring the amount of support provided by the identical support rule closer to a one for one basis of payment per household. This is because additional subscriptions submitted by CETCs for support would serve to reduce the total amount of support received by wireless CETCs for serving a household, as the fixed amount of support would be spread over more subscriptions, reducing the amount paid for each subscription.

If lines continue to increase, an interim cap would result in reduced support per line, indirectly accounting for the fact that wireless CETCs do not provide equal access, but receive support for the provision of access services. The Commission has established three high-cost universal service support mechanisms – Interstate Common Line Support ("ICLS"), Interstate Access Support ("IAS"), and Local Switching Support ("LSS") – to replace cost recovery that had previously taken place through access rates. The Commission has paid support from these mechanisms to wireless CETCs under the

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[3] *See* Letter from Ms. Mary L. Henze, Senior Director, Federal Regulatory, AT&T, to Ms. Marlene Dortch, Secretary, FCC, WC Docket No. 05-337, CC Docket No. 96-45 (filed March 22, 2007) Attachment (*"AT&T Proposal"*) at p. 2.

identical support rule. Furthermore, these support mechanisms account for a large proportion of the total amount of high-cost support distributed. For example, for the second quarter of 2007, wireless CETCs are projected to receive total monthly high-cost universal service fund ("USF") support of $88.7 million, of which $50.2 million, or 56.5 percent of the total, is attributable to the access-related programs of ICLS, IAS, and LSS.[4] Due to the fact that CMRS carriers do not provide equal access and have been compensated for the use of their network through payments from end-user subscribers, the receipt of ICLS, IAS, and LSS allows wireless CETCs to, in essence, receive double cost recovery for the use of their networks to complete toll calls.

AT&T, in its proposal for short-term stabilization of the high-cost USF, suggested that the Commission should institute a 25 percent reduction in access charge replacement funding paid to CETCs that were not affected by access charge reform.[5] AT&T estimated that this element of its interim relief proposal would result in a $520 million reduction of in the size of the federal high-cost fund.[6] A cap on high-cost CETC support would likely not achieve this great a reduction in the amount of total support distributed. However, the Companies submit that it is a measured and logical first step to slow the growth of the high-cost fund, and does represent a step toward addressing the inequities that exist in the current USF distribution mechanism.

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[4] *See* Universal Service Administrative Company, Second Quarter Appendices – 2007, HC01, High Cost Support Projected by State by Study Area – 2Q2007, available at: http://www.usac.org/about/governance/fcc-filings/2007/quarter-2.aspx.

[5] *See AT&T Proposal* at p. 10.

[6] Id. at p. 11.

III. It Is Questionable That High-Cost USF Support to Wireless CETCs Was In the Past Largely Used to Extend Service to Unserved Rural Areas; Therefore, Concerns About the Impact of an Interim Cap May be Misplaced.

It is apparent from a recent review of filings in this proceeding that many wireless customers are concerned that an interim cap in wireless CETC high-cost USF support could delay or eliminate the possibility of tower construction in rural areas that currently do not receive wireless service. However, in order to assess whether there are grounds for concern, the Commission should examine the how high-cost USF has been used, to date, by wireless CETCs.

Alltel, in a recent ex parte,[7] presents a map which indicates that it has constructed 35 towers in South Dakota over the period of 2003-2006,[8] which roughly coincides with the period over which it has received high-cost USF support in South Dakota. The map indicates wireless service coverage in 2002 and compares that area to the wireless service coverage that existed in 2006. About half of the towers resulted in significant improvements in coverage; the remaining half did not appear to significantly enhance coverage in the areas in which they were constructed. Over the 2003-2006 time period, calculations indicate that Alltel received $ 72.5 million in high-cost USF support for South Dakota.[9] This amounts to about $ 2.1 million for every tower it constructed in South Dakota over that same time period, or about $4.2 million for every tower that it

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[7] *See* Letter from Mr. Mark Rubin, Vice President, Federal Government Affairs, Alltel Corp., to Ms. Marlene Dortch, Secretary, FCC, WC Docket No. 05-337, CC Docket No. 96-45 (filed Jan. 12, 2007) Attachment at p. 28.

[8] Specifically, the cell sites are captioned "Cell Sites built after 2002."

[9] *See* disbursement data from the Universal Service Administrative Company for the period of January 2003-December 2006 for study area codes 399001 and 399002, total for HCL, HCM, IAS, ICLS, LSS, LTS, SNA and SVS, available at: http://www.usac.org/hc/tools/disbursements/default.aspx.

appears from Alltel's map to have significantly expanded service coverage. While USF support is also designed to be used for the maintenance of facilities and the provision of service in rural areas,[10] the data currently collected would indicate that the vast majority of USF support Alltel received for South Dakota for the period of 2003-2006 did not go towards extending service to unserved areas, but was spent for other purposes. It is reasonable to conclude that Alltel's use of USF support is not an isolated case.

The Companies submit that an interim cap on the amount of support paid to CETCs would likely not significantly affect the construction of towers to provide service to unserved areas. Sufficient funds are already being distributed in the form of high-cost support to wireless carriers, and improved signal coverage could best by accomplished by ensuring that CETCs are giving the appropriate priority to actual network investment in unserved areas.

IV. A Cap on CETC Support Will Stem the Fund's Growth and Provide an Opportunity to Create a Wireless USF Reforms that Require Accountability From Carriers that Receive Support.

As demonstrated above, the explosive growth in receipt of high-cost support by wireless CETCs has not necessarily resulted in improved wireless service coverage that is commensurate with the substantial amounts of support received by some carriers. Predictably, the Joint Board's recommended decision raised outcry from some segments of the wireless industry.[11] However, the nation's two largest wireless providers – AT&T and Verizon Wireless – support caps on CETCs,[12] so the opposition to the CETC cap is

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[10] *See* 47 U.S.C. § 254(e).

[11] *See*, for example, statement by CTIA – The Wireless Association, "CTIA Criticizes Anti-Consumer Universal Service Cap Proposal," released May 1, 2007.

[12] AT&T supports stabilizing the fund by immediately capping growth on an interim basis, as recommended by the Joint Board. *See High-Cost Universal Service Support*, WC Docket No. 05-337, and

isolated to a portion of the wireless industry. It is particularly interesting to note that AT&T supports a cap even though AT&T (or Cingular, as it was formerly known) is estimated to receive more than $210 million in high-cost support in 2007.[13] AT&T's support of the cap, despite the company's receipt of such support as a CETC, is a significant indication of the importance of adopting this recommendation.

Consistent with the Companies' above analysis, however, establishment of a CETC cap is not the Draconian measure that some wireless industry advocates would have the Commission believe. With wireless carriers riding the wave created by the identical support rule, CETCs were projected to receive more than $1 billion in USF payments in 2006 and almost $1.4 billion in 2007.[14] As noted by the Joint Board, that figure is forecast to grow to $2.5 billion in 2009, even without additional ETC designations.[15] While the Companies support an interim cap to reign in this kind of growth, they do not support the complete elimination of USF support to wireless carriers. There is no argument that customers desire availability of wireless service in rural America, and implemented reasonably and judiciously, some form of USF can play a role in helping accomplish that goal.[16] However, the Companies do support implementation

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Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Comments of AT&T Inc. (filed May 31, 2007) at p. 2. Verizon calls the Joint Board's recommendation a "critical first step toward meaningful, long-term reform." *See High-Cost Universal Service Support*, WC Docket No. 05-337, and *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Comments of Verizon and Verizon Wireless (filed May 31, 2007) at p. 1.

[13] *See* Universal Service Administrative Company, FCC Filings - 2007, HC01, High Cost Support Projected by State by Study Area, available at: http://www.universalservice.org/about/governance/fcc-filings/2007/.

[14] Ibid.

[15] *See Recommended Decision* at ¶ 4.

[16] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, and *High-Cost Universal Service Support*, WC Docket No. 05-337, Comments of the Nebraska Rural Independent Companies and

of *specific accountability* as to what the CETCs are doing to advance wireless service availability in truly high-cost areas.

As the Companies' analysis has shown, in South Dakota it certainly appears that Alltel has not utilized most of the millions of dollars in annual USF that it has received annually via the identical support to build out wireless services in the rural portions of the state. Yet current company leaders over the years have sent mixed messages as to how they believe wireless carriers should be held accountable for the USF they receive. Alltel President and Chief Executive Officer Scott Ford has advised that receipt of USF is assisting Alltel and "companies like ours" to accomplish rural network buildouts.[17] With a statement such as that, it appears that the company would be receptive to a modicum of oversight in ensuring USF is applied to buildout in unserved areas. Troublingly, former Western Wireless Chief Executive Officer John Stanton, now a member of Alltel's Board of Directors, has referred to USF support as representing "almost all margin," giving the direct impression that in his view wireless carriers do not have to be accountable for the manner in which they utilize this support.[18] Such mixed messages at a minimum paint a picture of inconsistency within the wireless industry as to whether, or how much, accountability should be infused into the USF system for CETCs.

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the South Dakota Telecommunications Association. (filed May 31, 2007) (*"Companies Comments"*) at pp. 7-8, in which the Companies suggest that a separate funding mechanism may be necessary for wireless carriers in order to target universal service support to areas that are currently unserved by wireless carriers to encourage network build-out.

[17] *See* Transcript of remarks of Scott Ford, President and Chief Executive Officer of ALLTEL Corporation, and John Stanton, Chief Executive Officer of Western Wireless Corporation, January 11, 2005, at the 15th Annual Global Entertainment, Media & Telecommunications Conference.

[18] *See Western Wireless (WWCA): USF Provides Upside to Our EBITDA Estimate,* Salomon Smith Barney Research Note, issued January 9, 2003, at p. 2. Then-Western Wireless CEO John Stanton stated: "The USF subsidy represents an incremental revenue source, which we believe should improve our revenue and EBITDA estimates by $6-$8 million during the first quarter and $24-30 million during 2003 as *the incremental revenue is almost all margin."* (emphasis added).

Even with the interim cap on CETC support at end-of-2006 levels as proposed by the Joint Board, this amount of support still represents a tremendous windfall for the wireless industry in that it includes large amounts of USF that was previously recovered from access rates. Even AT&T, the nation's largest wireless provider, has properly recognized that carriers not harmed by a reduction in access charges should not benefit from receiving this support.[19] That being the case, since the existing support that multiple CETCs will receive includes substantial amounts of money formerly recovered in access rates, the recommended cap is in fact overly generous for these companies.

An interim cap on CETC support is also appropriate because, as the Joint Board noted, ILECs' support is cost-based, while CETCs' support is not.[20] Due to the fact that CETCs' support is not cost-based, CETCs may receive a windfall. In their Comments to the Joint Board recommending proposals for long-term universal service reform, the Companies suggested that the high-cost universal service support mechanism should take into account the differing regulatory obligations of ILECs and CETCs, and the greater costs such regulatory obligations impose on ILECs.[21]

A CETC cap provides the opportunity for the Commission to "stop the bleeding" while the Joint Board and the Commission determine reforms to accomplish a more accountable system that accomplishes the twin goals of maintaining universal service – whatever that is determined to mean for wireless service -- but limiting fund growth.

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[19] *See AT&T Proposal* at p. 7.

[20] *See Recommended Decision* at ¶ 6.

[21] *See Companies Comments* at pp. 2-10.

Today, under the identical support rule, neither of those goals is being accomplished as they pertain to wireless CETCs.

V. Conclusion

The Companies appreciate the opportunity to offer comments on the Joint Board's *Recommended Decision* to impose an interim, emergency cap on the amount of high-cost support that CETCs may receive. The Companies recommend that the Commission adopt the *Recommended Decision* expeditiously and in its entirety.

Date: June 6, 2007

THE NEBRASKA RURAL INDEPENDENT COMPANIES and
THE SOUTH DAKOTA TELECOMMUNICATIONS ASSOCIATION

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THEIR ATTORNEYS

Exhibit A
List of Companies

The Nebraska Rural Independent Companies:

Arlington Telephone Company,
The Blair Telephone Company,
Cambridge Telephone Company,
Clarks Telecommunications Co.,
Consolidated Telco Inc.,
Consolidated Telecom, Inc.,
Consolidated Telephone Company,
Curtis Telephone Company,
Eastern Nebraska Telephone Company,
Great Plains Communications, Inc.,
Hartington Telecommunications Co., Inc,
Hershey Cooperative Telephone Company, Inc., K&M Telephone Company, Inc.,
The Nebraska Central Telephone Company,
Northeast Nebraska Telephone Company,
Rock County Telephone Company,
Stanton Telecom Inc., and
Three River Telco

The South Dakota Telecommunications Association:

Member companies are:
Alliance Communications Cooperative,
Armour Independent Telephone Company,
Beresford Municipal Telephone Company,
Bridgewater-Canistota Independent Telephone,
Cheyenne River Sioux Tribal Telephone Authority,
Faith Municipal Telephone Company,
Fort Randall Telephone Company,
Golden West Telecommunications Cooperative,
Hills Telephone Company,
Interstate Telecommunications Cooperative,
James Valley Telecommunications,
Jefferson Telephone Company d.b.a. Long Lines,
Kadoka Telephone Company,
Kennebec Telephone Company,
McCook Cooperative Telephone Company,
Midstate Communications, Inc.,
Mount Rushmore Telephone Company,
PrairieWave Community Telephone,
RC Communications, Inc.,
Roberts County Telephone Cooperative,
Santel Communications Cooperative, Inc.,

Sioux Valley Telephone Company,
Splitrock Properties, Inc.,
Stockholm-Strandburg Telephone Company,
Swiftel Communications,
Tri-County Telcom, Inc.,
Union Telephone Company,
Valley Telecommunications Cooperative,
Venture Communications Cooperative,
Vivian Telephone Company,
West River Cooperative Telephone Company,
West River Telecommunications Cooperative, and
Western Telephone Company.